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ABSTRACT

The monograph addresses implications of Nicholas Hendricks et al. versus Carroll, a federal court case that requires the provision of comparable classroom space for special education programs for disabled students. The case involved the Carbon Lehigh Intermediate Unit in Pennsylvania, and developed out of the different responsibilities of local districts and intermediate units in Pennsylvania and unsuccessful attempts to resolve the problem locally. The judgement required the Pennsylvania Department of Education to develop a Remedial Plan. This plan required local school districts and intermediate units to develop Facilities Plans to correct the problem. The Carbon Lehigh Intermediate Unit Facilities Plan involved forming a Special Educational Procedures Committee to develop operational definitions to implement the mandate and a Facilities Plan Committee involving all the school districts, plaintiffs, advocate representatives, and the Intermediate Unit, which would make specific decisions concerning classroom locations. Oversight is by the Pennsylvania Department of Education. The court case has had both positive and negative effects on the placement of special education classrooms within school districts. (DB)

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CLASSROOM SPACE: THE HENDRICKS V CARROLL CASE AND ITS IMPACT ON SPECIAL EDUCATION

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This presentation deals with a landmark Federal Court case which requires the provision of comparable classroom space for special education programs for disabled students. The case was heard in the United States District Court for the Eastern District of Pennsylvania. It involved Nicholas Hendricks et al. v Thomas K. Gilhool, Secretary of Education of the Commonwealth of Pennsylvania. (Because of a change in the Secretary of Education in Pennsylvania, the case is now Hendricks v Carroll).

The Court case involved the Carbon Lehigh Intermediate Unit, one of the 29 regional educational service agencies in Pennsylvania. Intermediate units provide special education programs and services to local school districts. Programs and services are provided at the request of districts, if they are unable to provide the services themselves. Carbon and Lehigh counties encompass 14 local school districts, with approximately 48,000 students and covers 750 square miles in Mideastern Pennsylvania.

Two parents with children in Intermediate Unit special education programs contacted the Education Law Center of Pennsylvania in order to bring suit against the Pennsylvania Department of Education for not requiring school districts to provide appropriate, comparable classroom space for disabled students. Both students involved in the case had moved to Intermediate Unit classes in three different school districts. Because of space

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problems, one of the students was required to change classrooms in three different districts in three consecutive years.

In the middle 1970s to the early 1980s, there were major changes in the way special education programs and services were provided to disabled students. Public Law 94-142 required least restrictive environment, mainstreaming and integration of students with age-appropriate peers. During that time, the Carbon Lehigh Intermediate Unit closed three special education centers (approximately 30 classes) and moved programs into regular public school buildings. At the same time, more students were identified as needing special education, particularly learning disabled, seriously emotionally disturbed, and severely handicapped. Because of the additional students, more classrooms were needed for special education programs. During that time many districts were experiencing a decrease in basic education enrollment and some districts closed school buildings. Therefore, just as more special education classroom space was needed, less space was available.

The issue of appropriate, comparable special education classroom space has been around for many years. Too often classrooms were isolated in basements, were next to boiler rooms, or in areas that were generally substandard. Even today, recent court and OCR decisions suggest that this problem continues.

Since intermediate units in Pennsylvania cannot own school buildings, the provision of classroom space for special education classes is a local school district responsibility. However, there was no state law or

regulation requiring districts to provide classroom space. Many times appropriate space was provided. Other times, the space was inadequate or not available.

Because of the ongoing difficulty with special education classroom space, attempts were made to solve the problem locally. There were discussions with district administrators and presentations to the Intermediate Unit and local school boards. One attempt was a "Fair Share Plan," a formula based on the number of district students in programs and number of classrooms provided by that district. This plan indicated additional rooms that districts needed to provide for special education. In the spring of 1987, when the plan was first proposed, it was rejected by district superintendents. It was proposed again in the spring of 1988 because the situation was getting progressively worse. New programs that were needed and approved by the Department of Education could not be started because "no classroom space was available." The "Fair Share Plan" was adopted, but did not adequately solve the problem of inappropriate space and the need for a long term commitment by the districts to provide classrooms.

Due to the ensuing Federal Court case, the Department of Education attempted to take steps to resolve the issue. School Construction Procedures in Pennsylvania required that 10% of the space in buildings be made available for special education. This solution proved to be too vague. Did this mean 10% of the square footage, 10% of the classrooms, or 10% of the students? It was possible for 10% of the space be made available for special education students from that district, but no space to serve low incidence students from various districts who needed a consortium classroom

operated by the Intermediate Unit. The Department of Education also attempted to develop their own plan, requiring districts and intermediate units across the state to evaluate current classrooms relative to specific criteria.

As part of the Court case, depositions were taken by the Education Law Center and the attorneys for Department of Education from Intermediate Unit teachers whose programs had moved or whose classrooms had been identified as inadequate. Deposition was also taken from the Intermediate Unit Director of Special Education.

In March 1989, Judge Daniel H. Huyett, III of the U.S. District Court for the Eastern District of Pennsylvania issued a Court Order requiring the Pennsylvania Department of Education to develop a remedial plan to resolve the issue. In the Court Order, Judge Huyett found that the Department of Education had no requirement for provision of appropriate, comparable classroom space for special education. He also found that disabled students were placed in inadequate classroom space, were required to move to other locations in order to make room for regular education classes and, in general, were discriminated against in the provision of classroom space.

The Department of Education developed a Remedial Plan in July of 1989 which was accepted by the plaintiffs and approved by the Court. The plan ordered local school districts to develop a Facilities Plan to correct the problems noted in the Remedial Plan. Initially, 25 Intermediate Unit special education classes were identified to be moved and/or reevaluated (jointly by the plaintiff, the Department of Education, and the Intermediate

Unit). All local school districts received notification from the Department of Education requiring their participation in an Intermediate Unit Facilities Plan.

The Remedial Plan was directed at "assuring that handicapped students within the Carbon Lehigh Intermediate Unit are provided with classroom space comparable to that of nonhandicapped students, are not relocated only to make classroom space available for nonhandicapped students, are not provided with restrictive classroom settings contrary to legal requirements for education in a least restrictive environment, and have necessary new classrooms made available as needed within the Intermediate Unit." The plan required the approval of a three year Facilities Plan within the Intermediate Unit, which would be updated annually. The Department of Education guaranteed the monitoring and implementation of the Remedial Plan. Every six months for three years, beginning October 1989, the Department of Education would provide the Court and the parties with a report of its monitoring activities and findings and conclusions.

The development of a Facilities Plan within the Intermediate Unit was a two-step process. The first step involved forming a Special Educational Procedures Committee made up of the plaintiffs, attorneys, school districts, and Intermediate Unit representatives. Their task was to develop "Construct Criteria" providing operational definitions to the mandates of the Remedial Plan. The general principles were that "classroom space for handicapped students should be comparable to that of nonhandicapped students; classroom space for handicapped students should be located in a manner that facilitates the concept of Least Restrictive Environment; classroom space for

handicapped students should be located in buildings that are appropriate for the age and grade level of the students involved; classroom space for handicapped children should be made available when new classes are needed and classrooms of handicapped students should not be relocated due to a failure to make space available or only to make room for nonhandicapped students." The plan also developed "Construct Criteria" which determined decisions about special education classroom space. These were put in priority order: comparability of classrooms, accessibility, proximity to home, travel time, age appropriateness, continuity, and availability of nonacademic and extra-curricular activity.

The second step of the process was to form a Facilities Plan Committee that involved all the school districts, the plaintiffs, advocate representatives, and the Intermediate Unit. The committee was to make specific decisions as to the locations of existing classrooms, as well as new classrooms needed for disabled students. This was a three year plan to be forwarded to the Pennsylvania Department of Education by April 1, 1990. The three year plan required the approval of the school boards of the 14 local school districts and the Intermediate Unit by June 1, 1990. All school boards approved the three year plan with the exception of one local school district. As a result, the Department of Education withheld state funds until that district approved the three year Facilities Plan.

The results of the Court case has had much impact on the provision of special education in the Intermediate Unit as well as throughout the state of Pennsylvania. On the positive side, school districts cannot remove a special education class from their district without the approval of the

Facilities Committee or the Department of Education. There must be a minimum three year commitment for a special education class to be housed in a district. Comparability of classroom space (quality) and central location (Ebb and flow) in a building is a major step forward. In addition, districts have to plan cooperatively for classroom locations. Students in special education are now in appropriate, comparable classroom space and have continuity throughout the time that they are in special education.

On the negative side, the Facilities Plan required that certain classrooms that were in appropriate locations, with comparable classroom space, were required to move to other buildings or school districts because of "Fair Share." There was much anxiety among staff, parents, and students about moving to new locations. Attempts were made to alleviate anxiety by providing visitations to new locations. Staff inservice was provided to regular education teachers. Building administrators were encouraged to visit existing programs. In some cases, classrooms were moved to school districts which were less centrally located, causing some students to travel further and longer than before. At times, proximity to home and "Fair Share" were in conflict.

The Facilities Plan Committee meets on a regular basis to update the plan and to deal with new issues regarding special education classroom space. This is an evolving process.